

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION**

HELEN HOWARD,

Plaintiff,

v.

CAPITAL ONE BANK (USA), N.A.,

Defendant.

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Case No. 1:18-cv-704 (CMH/MSN)

NOW COMES Plaintiff, HELEN HOWARD ("Plaintiff"), by and through her attorneys, and for her Complaint against Defendant, CAPITAL ONE BANK (USA), N.A., ("Defendant"), Plaintiff hereby allege as follows:

NATURE OF THE ACTION

1. This action is brought by Plaintiff pursuant to the Telephone Consumer Protection Act ("TCPA"), 47 U.S.C. § 227 *et seq.*

PARTIES

2. Plaintiff is a natural person at all times relevant residing in Greenville, North Carolina.

3. Defendant is a business entity with headquarters located in McLean, Virginia.

4. Defendant acted through its agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives and insurers.

JURISDICTION AND VENUE

5. Jurisdiction of this court arises pursuant to 28 U.S.C. § 1331 and 47 U.S.C. § 227.

6. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2) as the acts and transactions giving rise to this action occurred in this district as Defendant transacts business in this district.

FACTUAL ALLEGATIONS

7. Defendant places telephone calls to telephone number (732) 640-73xx.
8. Telephone number (732) 640-73xx is assigned to Plaintiff's cellular telephone.
9. These calls are not for emergency purposes.
10. These calls are made in connection with an attempt to collect an alleged debt.
11. On or around September 1, 2017, Plaintiff called Defendant and instructed Defendant to stop calling her cell phone.
12. Defendant continued to call Plaintiff's cell phone after September 1, 2017.
13. Defendant called Plaintiff's cell phone multiple times in a single day.
14. Between September 17, 2017 and October 29, 2017, Defendant called Plaintiff's cell phone at least 51 times.
15. Upon information and good faith belief, based on the frequency, number, nature and character of these calls, Defendant used an automatic telephone dialing system to place these calls to Plaintiff's cell phone.
16. Defendant did not have prior express consent from Plaintiff to use an automatic telephone dialing system to place these calls.
17. Defendant placed these calls voluntarily.
18. Defendant placed these calls under its own free will.
19. Defendant had knowledge that it was using an automatic telephone dialing system to place these calls.
20. Defendant willfully used an automatic telephone dialing system to place these calls.

21. Defendant knew that it did not have Plaintiff's express consent to use an automatic telephone dialing system to place these calls.

22. Plaintiff is annoyed and feels harassed by Defendant's calls.

COUNT I
VIOLATION OF TELEPHONE CONSUMER PROTECTION ACT

23. Defendant's actions alleged *supra* constitute numerous violations of the TCPA, entitling Plaintiff to an award of \$500.00 in statutory damages for each and every violation pursuant to 47 U.S.C. § 227(b)(3)(B).

24. Defendant's actions alleged *supra* constitute numerous and multiple knowing and/or willful violates of the TCPA, entitling Plaintiff to an award of \$1500.00 in statutory damages for each and every violation pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

WHEREFORE, Plaintiff prays that judgment be entered against Defendant for the following:

(1) Statutory damages of \$500.00 for each and every negligent violation of the TCPA pursuant to 47 U.S.C. § (b)(3)(B);

(2) Statutory damages of \$1500.00 for each and every knowing and/or willful violation of the TCPA pursuant to 47 U.S.C. § (b)(3)(b) and 47 U.S.C. § (b)(3)(C);

(3) Awarding such other and further relief as the Court may deem proper.

Respectfully submitted,

Dated: June 13, 2018

/s/ Francis Alexander Webb
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